

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 19-1776V

LAURA BELL FREY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 12, 2021

SCHEDULING ORDER-SPECIAL PROCESSING UNIT

On May 8, 2020, Respondent filed a status report (ECF No. 14) responding to the court's March 9, 2020 scheduling order. Respondent stated that Respondent's counsel had reviewed the records and determined that Petitioner had not filed medical records demonstrating that she suffered the residual effects of her injury for at least six months and thus it may not be appropriate for the case to remain in SPU. *Id.*

On July 7, 2020, Petitioner filed Exhibits 7-12 containing medical records and a Statement of Completion. Exhibit 12 contains a record of a June 10, 2020 physical therapy initial evaluation that indicates that "on May 27, 2020, she received a free injury assessment. She went back to see Dr. Lohse." Ex. 12 at 1. Ex. 11 at 5 contains a record of a May 28, 2020 visit to Dr. James Lohse where Petitioner was assessed with acute pain of left shoulder and instability of left shoulder joint. This record also indicates that Petitioner "has a history of a recent trauma and fall developing worsening pain." Ex. 11 at 5.

On October 7, 2020, Petitioner was directed to file the May 27, 2020 "free injury assessment" noted in Ex. 12 at 1, pharmacy records, a supplemental affidavit, and a Statement of Completion. On November 25, 2020, Petitioner filed Ex. 13-14. Exhibit 13 appears to be pharmacy records; however, portions of pages 1-2 are cut off and thus the exhibit is stricken and should be re-filed.

Petitioner has not filed the May 27, 2020 record. Petitioner filed Ex. 14, a supplemental affidavit; however, it provides little detail concerning Petitioner's symptoms during the critical period of March 2019 to May 2020. The period of March 2019 to May 2019 is particularly crucial in establishing that the statutory requirement of six months sequela has been satisfied. Petitioner should file another supplemental affidavit addressing in detail her symptoms, activities, limitations, and any self-treatment during

this time. In addition, Petitioner should also address which, if any, medications were provided for the treatment of her shoulder injury and which were for other conditions.

Accordingly:

- **The Clerk is directed to STRIKE Ex. 13 (ECF No. 28-1).**
- **Petitioner shall file, by no later than Wednesday, March 24, 2021, additional evidence including:**
 - **A complete copy of Ex. 13, pharmacy records;**
 - **A record of the May 27, 2020 “free injury assessment” noted in Ex. 12 at 1, or a status report explaining its absence;**
 - **A supplemental affidavit addressing in detail:**
 - **Petitioner’s symptoms, activities, limitations, and treatment between March 2019 and May 2020, with a particular focus on the critical period of March 2019 to May 2019;**
 - **Which, if any, medications were given to treat her shoulder condition and which were given for other conditions, including Petitioner’s knee;**
 - **Any other matters Petitioner wishes to address; and**
 - **A Statement of Completion.**
- **Respondent shall file, within 45 days of the date of filing of Petitioner’s Statement of Completion, a status report indicating how he intends to proceed in this case.** At a minimum, the status report shall indicate whether he is willing to engage in tentative discussions regarding settlement or proffer, is opposed to negotiating at this time, or that the Secretary has not yet determined his position. In the event Respondent wishes to file a Rule 4(c) report, he may propose a date for filing it, but shall indicate his position on entering into negotiations regardless of whether he wishes to file a Rule 4(c) report.

Any questions about this order or about this case may be directed to OSM staff attorney **Eileen Vachher at (202) 357-6388 or Eileen_Vachher@cfc.uscourts.gov.**

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master